



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

STANLEY "SKIP" PRUSS
DIRECTOR

BARRIER FREE DESIGN BOARD
BUREAU OF CONSTRUCTION CODES
Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

AGENDA

January 9, 2009
9:30 a.m.

- 1. Call to Order and Determination of Quorum**
- 2. Modifications to Agenda (Pages 1 and 2)**
- 3. Approval of Minutes – November 14, 2008 (Pages 3-6)**
- 4. Other Business**
- 5. Exception Applications**
 - 01) 77238, Abraham and Gaffney, PC – Clinton (Pages 7-19)
 - 02) 81275, Diamond Office Plaza – Macomb (Pages 20-33)
 - 03) 81515, Christian Freedom International – Chippewa (Pages 34-50)
 - 04) 82566, Learning Experience, The – Wayne (Pages 51-59)
 - 05) 82697, Abbott Manor – Ingham (Pages 60-65)
- 6. Remand - None**

Providing for Michigan's Safety in the Built Environment

BUREAU OF CONSTRUCTION CODES
P O. BOX 30254 • LANSING, MICHIGAN 48909
Telephone (517) 241-9328 • Fax (517) 241-9308
www.michigan.gov/dleg

DLEG is an equal opportunity employer/program.

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Barrier Free Design Board Meeting Agenda

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January 9, 2009

7. Staff Report –

8. Public Comment

9. Next Meeting – March 13, 2009

10. Adjournment

“The meeting site is accessible, including handicapped parking. Individuals attending the meeting are requested to refrain from using heavily scented personal care products, in order to enhance accessibility for everyone. People with disabilities requiring additional accommodations in order to participate in the meeting should contact Margarita Torres at (517) 241-9328 at least 10 working days before the event.”



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BARRIER FREE DESIGN BOARD
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
BUREAU OF CONSTRUCTION CODES
Conference Room 3
2501 Woodlake Circle
Okemos, Michigan 48864

MINUTES
November 14, 2008
9:30 a.m.

MEMBERS PRESENT

Mr. Roger Donaldson, Chair
Mr. Richard Brunvand
Mr. Daryl Domke
Mr. Brett Holt
Ms. Karla Hudson
Mr. Tim McGladdery
Mr. Joseph Shelton

MEMBERS ABSENT

Mr. Donald Link, Vice Chair
Mr. Marvin Petty

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH PERSONNEL
ATTENDING

Mr. Irvin J. Poke, Director, Bureau of Construction Codes
Ms. Beth Aben, Deputy Director, Bureau of Construction Codes
Mr. Todd Cordill, Assistant Chief, Plan Review Division
Ms. Usha Menon, Plan Reviewer, Plan Review Division
Ms. Margarita Torres, BFD Secretary, Plan Review Division

OTHERS IN ATTENDANCE

None

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1. **CALL TO ORDER AND DETERMINATION OF QUORUM**

The meeting was called to order at 9:33 a.m. by Chairperson Donaldson. A quorum was determined present at that time.

2. **MODIFICATIONS TO AGENDA**

None

3. **APPROVAL OF MINUTES**

A **MOTION** was made by Board Member Holt and supported by Board Member McGladdery to approve the minutes of the September 19, 2008 meeting. **MOTION CARRIED**

4. **TABLED ITEMS**

None

5. **OTHER BUSINESS**

6. **EXCEPTION APPLICATIONS**

- 01) 80410, Cook Legal Research Library - Washtenaw
- 03) 80940, Tawas Area Junior High School – Iosco
- 04) 81202, Allegan County Courthouse – Allegan
- 06) 81664, City of Wayne Youth Services – Wayne

A **MOTION** was made by Board Member Holt and supported by Board Member Brunvand to adopt the reports of the Administrative Law Judge and the recommended decisions for the cases listed above. The board acknowledged the receipt of all materials submitted by the applicants. **MOTION CARRIED.**

- 02) 80793, Michigan Stadium - Washtenaw

A **MOTION** was made by Board Member McGladdery and supported by Board Member Domke to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

05) 81378, Dream Academy High School - Berrien

A **MOTION** was made by Board Member Holt and supported by Board Member Brunvand to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

07) 82337, Jackalopes Bar and Grill - Wayne

A **MOTION** was made by Board Member Holt and supported by Board Member Shelton to adopt the report of the Administrative Law Judge and the recommended decision. **MOTION CARRIED.**

*08) 82484, Lapeer Community Church – Lapeer

A **MOTION** was made by Board Member Brunvand and supported by Board Member Holt to send this exception back to the Administrative Law Judge for a re-hearing. **MOTION CARRIED.**

7. **REMANDS**

No remands were received for further board action.

8. **STAFF REPORT**

Deputy Director Beth Aben reported on the following.

In October 24, 2008 the court issued a decision dissolving the injunction that was issued in 2005 against the 2003 Michigan Uniform Energy Code. We are now enforcing the 2003 Michigan Uniform Energy Code.

Assistant Chief Todd Cordill reported on the following:

Many questions have come to the bureau regarding the 2003 Michigan Uniform Energy Code. One question in particular, “what does this really change beyond what’s covered by the residential code?” The answer to that question is that the Part 10a Rules are not covered by the Residential Code and did not change. It is still the ASHRAE Standard 90.1 1999 edition.

Director Irvin Poke reported on the following:

Assistant Chief Todd Cordill would develop an ad hoc code review committee for the building, residential and rehabilitation codes. (Moving forward from the 2006 Building Code to the 2009). This committee would require a representative from the Barrier Free Design Board.

Board Member Holt made a **MOTION** and was supported by Board Member Brunvand to recommend Chairperson Donaldson as the barrier free design representative for the code review committee. **MOTION CARRIED.**

9. **PUBLIC COMMENT**

None

10. **NEXT MEETING**

January 9, 2009

11. **ADJOURNMENT**

The meeting adjourned at approximately 10:20 a.m.
(Brunvand **MOTION**, Domke/Holt **SUPPORT**) **MOTION CARRIED**

Approved: _____
Roger Donaldson, Chairperson

Date: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of

Abraham and Gaffney, P.C.,
Applicant
_____ /

Docket No. 2008-1257

Agency No. 77238

Agency: Bureau of Construction Codes

Case Type: Barrier Free Design
Exception Request

5. EXCEPTION APPLICATIONS
01. 77238

Issued and entered
this 6th day of November, 2008
by Renée A. Ozburn
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL HISTORY

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended, MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on October 15, 2008, in Lansing, Michigan. Katherine Pearce and Eric Glashouwer appeared on behalf of Abraham and Gaffney, P.C. Usha Menon appeared on behalf of the Plan Review Division of the Bureau of Construction Codes.

ISSUE

Whether the Applicant should be granted an exception from Section 3409.2 of the 2003 Michigan Building Code (MBC).

FINDINGS OF FACT

1. The Applicant is a Certified Public Accounting (CPA) firm located in St. Johns, Michigan. There are about ten employees currently working in the subject building.

2. The two-story structure was originally built over 100 years ago. In 1984 additional floor space was added to the first and second floors of the building. Currently, the second story is approximately 2,738 square feet. When new space was added in 1984, code requirements called for an elevator to the second floor. Subsequent elevator code amendments do not require such elevators in buildings of less than three stories or 3000 square feet. The elevator has stood virtually unused for 24 years. Nonetheless, it costs the firm approximately \$1,400 annually to maintain the elevator because of inspection fees, electric bills, a monthly maintenance fee, insurance costs and state licensing fees.

3. The nature of the business is to meet with clients. There is ADA access to all necessary facilities to fully serve the public and employees on the first floor. There is nothing occurring on the second floor that can not be equally handled on the first floor. Currently four accountants and one "IT" person have offices on the second floor. If an employee or a client had a disability that prevented them from accessing the second floor, all activities handled by the firm could be accommodated on the first floor.

4. The Applicant wants to take the elevator out of service or make it dormant to ease the economic burden that is incurred by keeping the elevator in serviceable condition. There are no future plans to reactivate the elevator. It could easily be brought back up to code if it was placed in service again.

5. The Applicant understands that if the exception is granted a state seal will be placed on the elevator. Further, the Applicant will be required to remove oil lines and disconnect power in order to keep the elevator dormant after one year.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when compelling need is demonstrated by the Applicant. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules which have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

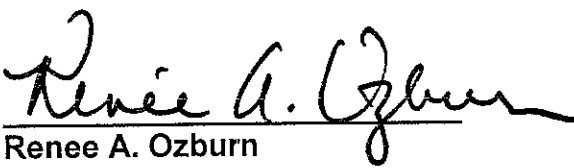
The Applicant has proven that it is economically infeasible to continue keeping the elevator in use. The elevator has not been used in years and the cost of keeping serviceable, with the attendant inspection and licensing fees, is unnecessary in light of the total accessibility of all functions performed by the Applicant, and available to the public, on the first floor. The Applicant has proven that acceptable alternatives are available which justify granting exceptions to keeping the second floor fully accessible through the elevator.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 3409.2 of the 2003 MBC.

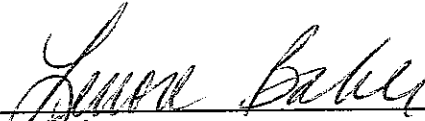
As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


Renee A. Ozburn
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 6th day of November, 2008.



Lenore Baker

State Office of Administrative Hearings and Rules

Dale Abraham
Abraham & Gaffney, P.C.
108 North Spring Street
Saint Johns, MI 48879

Usha Menon
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
P.O. Box 30254
Lansing, MI 48909

City of Saint Johns
100 E. State Street, Ste. 1100
Saint Johns, MI 48879

Principals

Dale J. Abraham, CPA
Michael T. Gaffney, CPA
Steven R. Kirinovic, CPA
Aaron M. Stevens, CPA
Eric J. Glashouwer, CPA



ABRAHAM & GAFFNEY, P.C.
Certified Public Accountants

108 N. Spring St.
St. Johns, MI 48879
(989) 224-6836
FAX: (989) 224-6837

February 26, 2008

Michigan Dept. Of Labor & Economic Growth
Bureau of Construction Codes
Plan Review Division
P.O. Box 30255
7150 Harris Drive
Lansing, MI 48909

Dear Barrier Free Design Board:

Attached is our completed application for Barrier Free Design Rule Exception. We are requesting this exception based on an economic compelling need. Each year payment is made for the annual safety test, the State licenses, quarterly maintenance, electric bill, and insurance on an elevator that is not used. The current annual costs are \$1,420. The elevator has been in place since 1984 which is roughly \$34,000 in today's dollars.

In 1984 when the building additions were made, the code required an elevator to be installed. Those requirements have now changed and do not require an elevator to a second floor if it is less than 3,000 square feet (Section 4.1.3 and 4.1.5 of the ADA Standards for Accessible Design)

The elevator is not used and changes in that usage pattern are not foreseen. There is barrier free access into the building and we continue to be compliant with ADA standards on the first floor that include toilet facilities and office space, which are available to clients and employees. Based on the elevator code requirement and for economic relief, we feel that an exception is possible.

For economic reasons, we are planning to keep the elevator dormant and not actually remove the elevator. It is our understanding that once we are granted an approval from your Board, a seal would be placed on the elevator with fines associated if the seal is tampered with. Eventually measures to make sure the elevator is taken out of service would be made. In the event we ever needed to put the elevator back into service, we would have to pay to bring it up to the codes that are current at that time.

We look forward to a pre-hearing conference and formal hearing to provide additional input.

Sincerely,

Dale J. Abraham
Principal

Principals

Dale J. Abraham, CPA
Michael T. Gaffney, CPA
Steven R. Kirinovic, CPA
Aaron M. Stevens, CPA
Eric J. Glashouwer, CPA



ABRAHAM & GAFFNEY, P.C.

Certified Public Accountants

108 N. Spring St
St. Johns, MI 48879
(989) 224-6836
FAX: (989) 224-6837

February 4, 2008

Mr. Bert Gale,
Building Inspector for City of St. Johns
AGS

Dear Mr. Gale,

The elevator at 108 N. Spring St in St. Johns was installed in 1984 according to the building code at that time. The 1984 building expansion included additions on two stories for added office space on both levels. The attached sketch of the second floor shows outside dimensions of approx 2,738 sq feet.

The elevator has rarely been used over the past 23 years but we have maintained it and licensed it according to the government regulations at a current cost of \$1,400 a year. Two years ago half of our employees moved to a different location and there is only one occupied office in the 1984 addition. We do have barrier free access into the building. The first floor meets the ADA standards for Section 4.2 Space Allowance and Reach Ranges and Section 4.3. Accessible Route, that includes toilet facilities, and office space which are available to clients and employees.

The ADA Standards for Accessible Design (Sections: 4.1.3. New Construction and 4.1.5. Additions) lists as an EXCEPTION: 1: Elevators are not required in facilities that are less than three stories or have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. Abraham & Gaffney, P.C. is a CPA firm. Based on the newer elevator code requirement and for economic relief, we feel that an exception is possible.

Upon granting of the exception it is our understanding that the State of MI will place a seal on the elevator. After one year if we still want to keep the elevator dormant we must take measures such as remove the oil line, and disconnect power. We understand that once the elevator is considered out of service, that in order to use it again we would have to put it back in service by meeting the current elevator codes at that time.

Attached is the *Application for Barrier Free Design Rule Exception*. The application requires input from you as the administrative authority on elevators in St. Johns, along with your signature. Please call Cathy Pearce, Firm Administrator, at 989 224-6836 to let her know when the form is ready so that we can get on the MI Barrier Free Design Board agenda as soon as possible.

Sincerely,

Dale Abraham
Principal

Principals

Dale J. Abraham, CPA
Michael T. Gaffney, CPA
Steven R. Kirinovic, CPA
Aaron M. Stevens, CPA
Eric J. Glashouwer, CPA
Alan D. Panter, CPA



ABRAHAM & GAFFNEY, P.C.

Certified Public Accountants

108 N. Spring St.
St. Johns, MI 48879
(989) 224-6836
FAX: (989) 224-6837

September 5, 2008

Michigan Dept. Of Labor & Economic Growth
Bureau of Construction Codes
Plan Review Division
P O. Box 30254
7150 Harris Drive
Lansing, MI 48909

RECEIVED

SEP 26 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Dear Barrier Free Design Board:

Attached is the information that you requested in your March 3, 2008 letter re: Project No. 77238 — Clinton. I trust this will continue the process of taking our elevating device out of commission.

To reiterate our previous letter, we are requesting this exception based on an economic compelling need. Each year payment is made for the annual safety test, the State licenses, quarterly maintenance, electric bill, and insurance on an elevator that is not used. The current annual costs are \$1,420. The elevator has been in place since 1984 which is roughly \$34,000 in today's dollars.

The elevator is not used and changes in that usage pattern are not foreseen. There is barrier free access into the building and we continue to be compliant with ADA standards on the first floor that include toilet facilities and office space, which are available to clients and employees. Based on the elevator code requirement and for economic relief, we feel that an exception is possible.

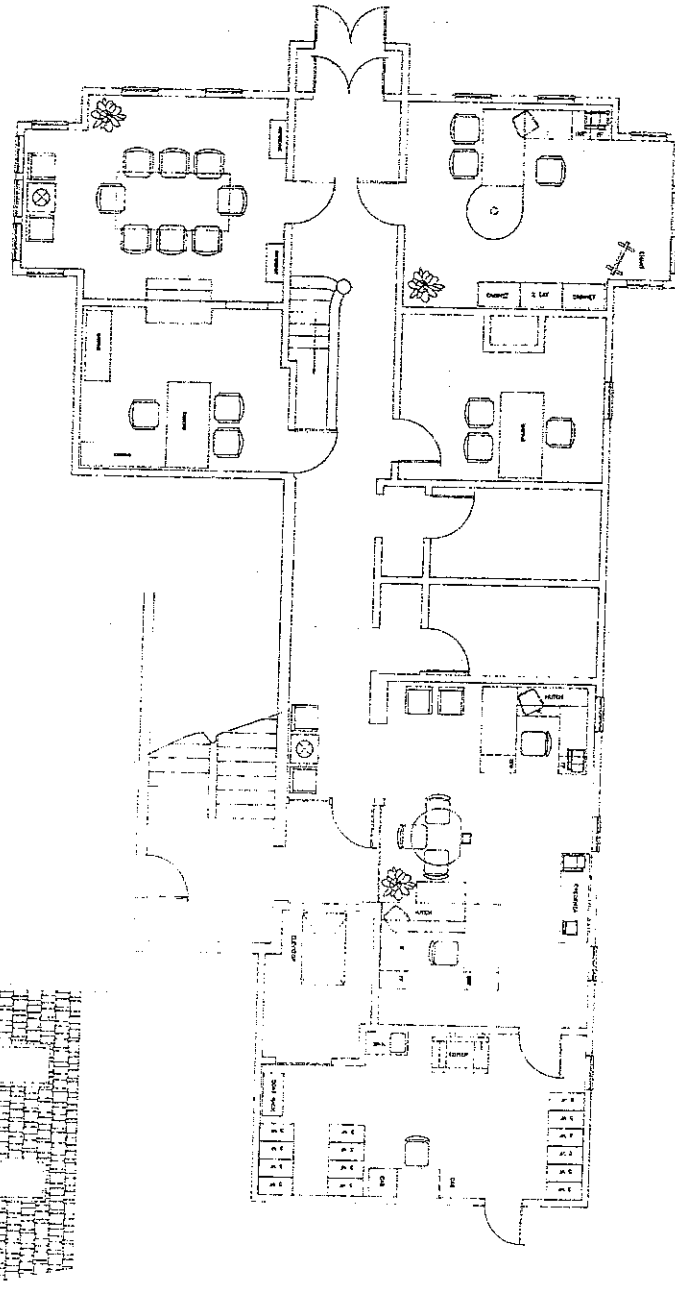
For economic reasons, we are planning to keep the elevator dormant and not actually remove the elevator. It is our understanding that once we are granted an approval from your Board, a seal would be placed on the elevator with fines associated if the seal is tampered with. Eventually measures to make sure the elevator is taken out of service would be made. In the event we ever needed to put the elevator back into service, we would have to pay to bring it up to the codes that are current at that time.


We look forward to a pre-hearing conference and formal hearing to provide additional input.

Sincerely,

Dale J. Abraham
Principal

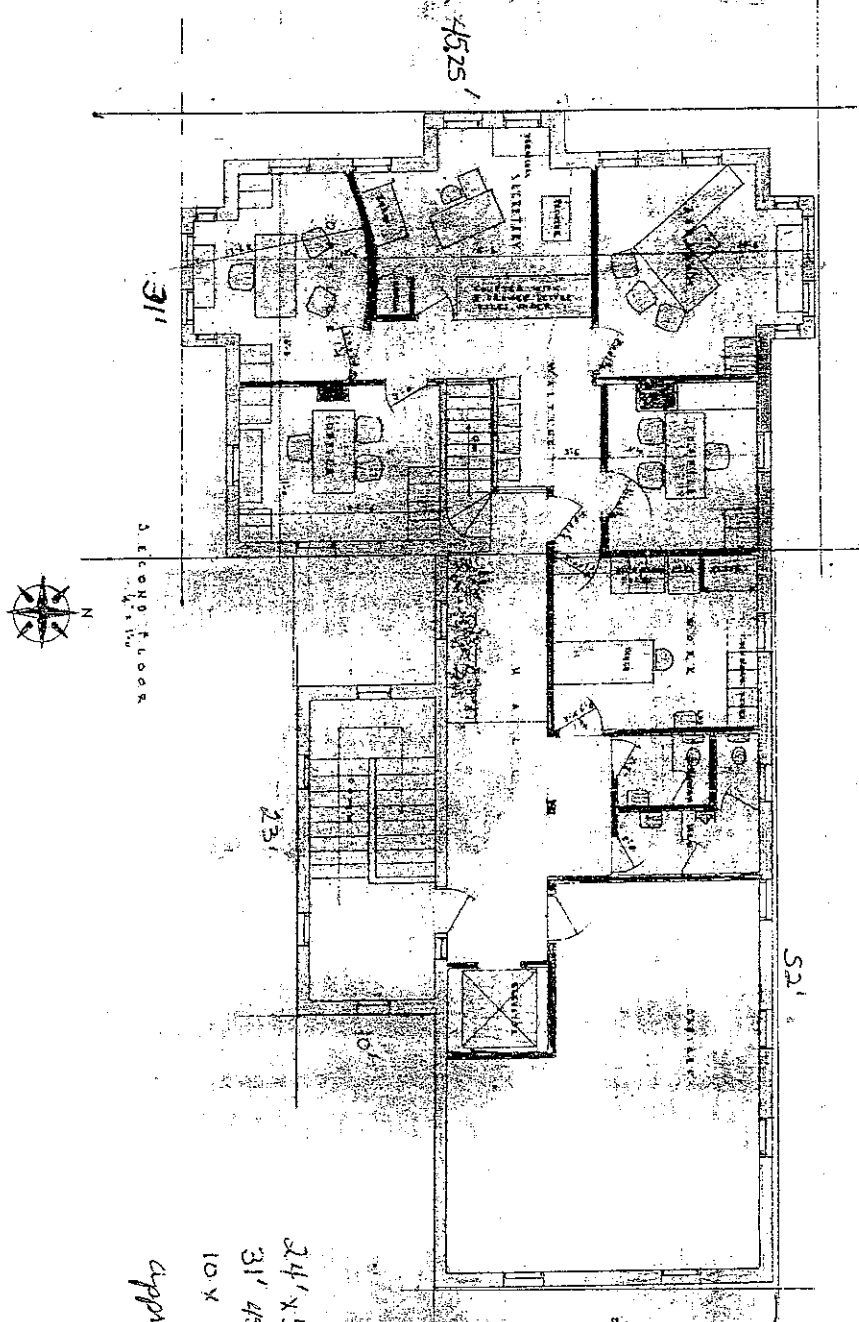
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TRAC # JOB # ST. JOHNS MI	JOB TITLE ABRAHAM & GAFFNEY ST. JOHNS MI	STREET TITLE FLOOR PLAN PHASE II SIZE: 1/4" = 1'-0"	1ST FLOOR 
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77238

Shelf No. F.1e



24' x 52' ≈ 1,248
 31' x 45'25" ≈ 1,403
 10' x 23' ≈ 230
 Approx ≈ 2,881 sq ft

2nd FLOOR

4.1.3 Accessible Buildings: New Construction

(b) Accessible passenger loading zones;

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

(d) Accessible toilet and bathing facilities when not all are accessible

4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.

(2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

(3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5

(4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

(5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10

EXCEPTION 1: Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible

ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator pent-houses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited to equipment control rooms and projection booths

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

(6) Windows: (Reserved).

(7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13

(c) Each door that is an element of an accessible route shall comply with 4.13

4.1.3 Accessible Buildings: New Construction

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movietheaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines (ATMs) are provided, each ATM shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved)**4.1.5 Accessible Buildings: Additions.**

Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

REG

Application for Barrier Free Design Rule Exception Michigan Department of Labor & Economic Growth Bureau of Construction Codes / Plan Review Division P.O. Box 30255, Lansing, MI 48909 517-241-9328

133

FEB 28 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION
Application Fee: \$300.00

www.michigan.gov/bcc

77 238

Authority: 1956 PA I
Completion: Mandatory
Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION			
FACILITY NAME Abraham & Gaffney, P.C.		STREET / SITE ADDRESS 108 N. Spring Street, St. Johns, MI	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of St. Johns		COUNTY Clinton	
Estimated Project Cost \$		Estimated Cost of Compliance \$ 1,440/annually	
BUILDING PERMIT (to be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number 1954 Building existing Permit number not known	
Is a Temporary Exception Requested? <input type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP B
			CONSTRUCTION TYPE TUB
Project Does Not Comply With Barrier Free Design Requirements As Follows: Project does comply with Codes & Regulation at time of construction MBC 1104.4			
Reason for Non-Compliance OWNER wants to take elevator out of commission.			
NAME Bert Gale, Building Inspector City of St. Johns		ENFORCING AGENCY City of St. Johns	
ADDRESS P.O. Box 477, Suite 1100		CITY St. Johns	ZIP CODE 48879
BUILDING OFFICIAL SIGNATURE (Must be an original signature) Bert Gale		TELEPHONE NUMBER (Include Area Code) 1-800-627-2801	
PROJECT ARCHITECT/ENGINEER (When professional services are required by code or law)			
NAME WILLIAM HOBBS HOBBS + BLACK ASSOCIATES, INC.		MICHIGAN LICENSE NUMBER 14119	FIRM NAME HOBBS + BLACK ASSOCIATES
ADDRESS 117 E. ALLEGAN ST.	CITY LANSING	STATE MI	ZIP CODE 48933
		TELEPHONE NUMBER (Include Area Code) (517) 484-4870	
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE Dale Abraham		COMPANY NAME Abraham & Gaffney, P.C.	
ADDRESS 108 N. Spring St.		CITY St. Johns	STATE MI
		ZIP CODE 48379	TELEPHONE NUMBER (Include Area Code) (989) 224-6836
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.		FAX NUMBER (Include Area Code) (989) 224-6837	
APPLICANT SIGNATURE (Must be an original signature) Dale Abraham		DATE 2/5/08	

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

RECEIVED

In the matter of

DEC 11 2008

Docket No. 2008-1017

Diamond Office Plaza
49100 Vandyke
Shelby, MI

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Agency No. 81275

Agency: Bureau of Construction
Codes

Applicant

Case Type: Barrier Free Design
Exception Request

Issued and entered
this 10th day of December, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL FINDINGS

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on October 27, 2008 in Lansing, Michigan. Present were Attorney Lionel Bashore and Philip Leone, representing the Applicant and Usha Menon, representing the Plan Review Division

The Applicant submitted a post hearing statement dated November 26, 2008 providing estimates for a barrier free compliant basement bathroom, a full size elevator, and a limited-use/limited-application elevator for basement access as well as a first floor diagram.

5. EXCEPTION APPLICATIONS
02. 81275

ISSUE

Should the Board grant the Applicant a five year time exception from Sections 1104.4 and 1109.2 of the 2003 Michigan Building Code (MBC)?

During the hearing Ms. Menon pointed out the need to add Section 1109.2 and delete Section 604.5.1 of the 1998 ICC/ANSI A 117.1 code.

FINDINGS OF FACT

The building at issue was built in 2001 for 1 million 575 thousand dollars. It is owned by PL & L Investments; Mr. Leone is one of the principles in this corporation. The building contains 11,400 square feet on one floor with the same area in the basement, 11 feet below the first floor.

The first floor has at least 7 tenants – an insurance company, 4500 square feet; an Attorney, 250 square feet; real estate company, 1500 square feet; bookkeeper, 600 square feet; a real estate company, 1500 square feet; a doctor office; and a mortgage company 2000 square feet. Each of these tenants has direct access to their spaces from outside. Some of these tenants have also improved basement space that was included in their leases. For example, the bookkeeper uses a portion of the basement for storage; the real estate office uses a portion for sign and file storage; the Doctor has created a private office for the Doctor and a lunch area for employees; the financial services business has offices for the two owners.

Also in the basement is the office of PL & L Investments taking 1000 square feet and used only by Philip Leone. A bathroom was added to this space for the use of Mr. Leone alone. This bathroom measures 5 feet, 4 and 1/2 inches square. This area of the

basement was finished in 2003.

The basement is currently used as a remote location for first floor tenants. No patients or customers visit the tenants at their basement space. Even the Applicant uses the basement area as a private office. The only toilet in the basement is that provided for Mr. Leone.

The Applicant has a plan to construct a building the same size as the existing structure approximately 200 feet distant and separated by a common parking lot. This second building will have elevator access to the basement. Zoning has been changed to permit this construction, but the Applicant is unable to obtain financing during the current economic downturn.

The Applicant is facing increasing difficulty in making his mortgage payments because several of his tenants are two to three months behind in rent and want concessions in rent amounts. Mr. Leone owes \$1,575,000 on his mortgage and taxes run \$45,000 per year. He is currently collecting a gross amount of \$10 per square foot. At this rate, he will incur a \$40 to \$50,000 loss this year. While he has been a builder since 1984, he has no current contracts to build. The downturn in the economy and especially Macomb County has halted construction plans. Because of these economic facts, the Applicant requests a five year time exception. Within this time he hopes to obtain financing and build the second building.

As noted on the post hearing statement, it will cost \$80,000 to add a standard elevator and \$55,000 for a limited-use/limited-application elevator. An additional sum would be required to reconstruct the building to have the elevating device accessible by all tenants. It would cost \$3,405 to provide a barrier free compliant bathroom in the

Applicant's basement space. What the Applicant hopes to do is build the new building across the parking lot and move his current tenants to the new building. Then the existing structure could be modified to accommodate interior vertical access with future tenants able to use both levels.

Requiring interior access and a barrier free bathroom now would require renegotiating existing leases. Also substantial reconstruction would be required to allow all tenants access to the elevator. As the tenant space is currently configured, there is no building lobby area for an elevator. Each tenant has its own exterior access and access to the basement from two exterior doors.

The Applicant has no money or prospects of raising enough to pay for the renovations required to satisfy the code requirements. With his means of making a living – construction – brought to a halt in the current economic climate, he will be fortunate if he is able to keep the building at issue. As noted above, his tenants are having trouble making their rent payments.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception

should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1104.4 of the 2003 MBC requires an accessible route:

1104.4 Multilevel buildings and facilities. At least one accessible route shall connect each accessible level, including mezzanines, in multilevel buildings and facilities.

Section 1109.2 of the MBC addresses bathrooms in pertinent part:

1109.2 Toilet and bathing facilities. Toilet rooms and bathing facilities shall be accessible. . . . At least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing facility shall be accessible. (Exceptions omitted)

The Applicant has presented compelling reasons to justify a 5 year time exception. It will cost a considerable sum to reconstruct the building to satisfy the above provisions. Even if the Applicant had the money, each tenant would have to renegotiate the terms of their rental agreements to permit taking space for corridors and space for the elevator or limited-use/limited-application elevator. The Applicant cannot require these changes without tenant agreement.

The best solution is to allow the Applicant to build the planned building, move his tenants, and then reconstruct the existing building.

There is no question the Applicant should have known of the Barrier Free Design Code requirements before allowing tenants and even the Applicant itself to use the

basement without interior access. But at this point the goal should be correcting the problem without putting the Applicant out of business or forcing foreclosure of the building. As noted above, customers do not come to the basement level. It is used only for storage or additional space for first floor tenants – private offices and a lunch area as examples.

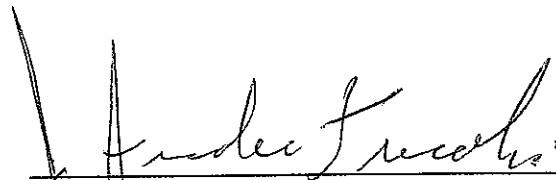
RECOMMENDED DECISION

I recommend the Board grant the Applicant a five year time exception from Sections 1104.4 and 1109.2 of the Michigan Building Code 2003.

As a condition to granting this time exception, the owner shall submit, within 60 days from the Board's Final Order issued after review of this recommendation, a plan/proposal detailing how compliance will be achieved within the time exception period. This plan/proposal must show or state that it is technically and structurally feasible to meet the applicable Barrier Free Design Rules.

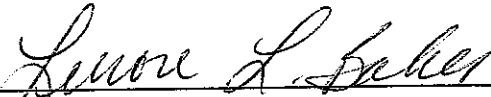
As a condition to granting these exceptions, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.


J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 10th day of December, 2008



Lenore L. Baker

State Office of Administrative Hearings and Rules

Harry Reese
Shelby Township Building Department
52700 Van Dyke
Shelby Township, MI 48316

Todd Cordill
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Lionel Bashore
49206 Van Dyke Ave.
Shelby Township, MI 48317

Philip Leone
PL and L Investment
Diamond Office Plaza
48212 Vandyke
Shelby Township, MI 48316

DETROIT ELEVATOR COMPANY
(248) 591-7484 TELEPHONE
(248) 591-9777 FAX

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Mr. Phillip Leone	Randy Frump
COMPANY:	DATE:
FAX NUMBER:	TOTAL NO OF PAGES INCLUDING COVER:
(586)254-1268	(1)
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
()	
RE:	YOUR REFERENCE NUMBER:
Shelby Twp.	

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Phillip,

A budget price for (1) standard 2000# two stop in line hydraulic elevator would be around \$80,000.00, and a budget price for (1) LULA 1400# two stop in line elevator would be around \$55,000.00.

If you have any questions, please call me at (248) 591-7484, or email me at rfrump@detroit-elevator.com.

Thank you,

Randy Frump

Sales Order

P L & L INVESTMENTS
49212 Van Dyke Road
SHELBY TWP., MI 48317
USA

Sales Order Number:
1209

Sales Order Date:
Nov 14, 2008

Ship By:

Voice: 810 254-2500
Fax: 810 254-1268

*estimate to
redo bath in basement*

Page:
1

Sold To:
PL&L INVESTMENTS II LLC

Ship To:

Customer ID	PO Number	Sales Rep Name
PLLINV02		
Customer Contact	Shipping Method	Payment Terms
	UPS Ground	Net 30 Days

Quantity	Item	Description	Unit Price	Extension
1.00		rough carpentry	650.00	650.00
1.00		rough carpentry materials	330.00	330.00
1.00		trim carpentry	450.00	450.00
1.00		trim material	225.00	225.00
1.00		re do plumbing	1,400.00	1,400.00
		replace flooring		350.00

Subtotal 3,405.00

Sales Tax

Freight 0.00

TOTAL ORDER AMOUNT 3,405.00



Lionel E. Bashore, Esq.
lionel@bglawpc.com

Kevin S. Green, Esq.
kevin@bglawpc.com

BASHORE GREEN LAW GROUP

RECEIVED

Via Facsimile: (517) 335-6696

November 12, 2008

DEC 04 2008

Honorable Andres Friedlis
State Office of Administrative Hearings and Rules
Ottawa State Office Building
611 West Ottawa Street, 2nd Floor
Lansing, Michigan 48933

BUREAU OF CONSTRUCTION CODES
ADMINISTRATION DIVISION

RECEIVED
DEPARTMENT OF
LABOR & ECONOMIC GROWTH

DEC 04 2008

BUREAU OF CONSTRUCTION CODES
ADMINISTRATION DIVISION

**Re: Diamond Office Plaza
Docket No. 2008-1017**

Dear Sir or Madame,

Please allow this letter to confirm our conversation with your offices of today, November 12, 2008, wherein your office has agreed to an extension of time for our client to gather the materials requested at the hearing held on Monday, October 27, 2008. As we explained, we are having difficulty getting the estimates back but feel confident that we will be able to complete the request by Monday, November 24, 2008. We apologize for the delay but feel this extension will allow us to obtain the requested documents and forward them to your office for review.

We appreciate your cooperation and thank you in advance.

Very truly yours,

BASHORE GREEN LAW GROUP

By: Lionel E. Bashore

LEB/cc

cc via first class mail:

PL&L Investments L.L.C.
Harry Reese
Irvin Poke
Usha H. Menon

RECEIVED
DEC 04 2008
BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION



BASHORE GREEN LAW GROUP

Lionel E. Bashore, Esq.
lionel@bglawpc.com

Kevin S. Green, Esq.
kevin@bglawpc.com

November 26, 2008

RECEIVED
DEPARTMENT OF
LABOR & ECONOMIC GROWTH

DEC 04 2008

BUREAU OF CONSTRUCTION CODES
ADMINISTRATION DIVISION

Honorable Andres Friedlis
State Office of Administrative Hearings and Rules
Ottawa State Office Building
611 West Ottawa Street, 2nd Floor
Lansing, Michigan 48933

**Re: Diamond Office Plaza
Docket No. 2008-1017**

Dear Honorable Friedlis,

In accordance with the hearing conducted on October 27, 2008, accompanying this letter are the following documents:

1. Quote for installation of elevator/lift
2. Estimate to bring existing bath into compliance
3. First floor plan of building

Again we ask that in whatever determination this Court makes we be permitted five years to become compliant with the Courts order. We also respectfully ask that all repairs needed to be requested under the order be done at or about the same time.

We appreciate your cooperation and thank you in advance.

Very truly yours,

BASHORE GREEN LAW GROUP

By: Lionel E. Bashore

LEB/cc

Cc w/enclosures (blueprint to follow):

PL&L Investments L.L.C.
Harry Reese
Irvin Poke
Usha H. Menon

RECEIVED
DEC 04 2008
BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

RECEIVED

DEC 15 2003



Lionel E. Bashore, Esq.
lionel@bglawpc.com

Kevin S. Green, Esq.
kevin@bglawpc.com

BUREAU OF CONSTRUCTION PLAN REVIEW DIVISION
BASHORE GREEN LAW GROUP

December 8, 2008

Usha H. Menon
State Office of Administrative Hearings and Rules
Ottawa State Office Building
611 West Ottawa Street, 2nd Floor
P.O. Box 30254
Lansing, Michigan 48933

Irvin Poke
State Office Michigan
BCC Plan Review Division
Ottawa State Office Building
611 West Ottawa Street, 2nd Floor
P.O. Box 30254
Lansing, Michigan 48933

Harry Reese
Shelby Township Building Department
52700 Van Dyke Avenue
Shelby Township, Michigan 48316

**Re: Diamond Office Plaza
Docket No. 2008-1017**

Dear Sirs and Madame,

Please find enclosed the blueprints previously promised to you in our letter dated November 26, 2008. If you have any questions please feel free to contact me.

We appreciate your cooperation and thank you in advance for your patience.

Very truly yours,

BASHORE GREEN LAW GROUP

By: Lionel E. Bashore

LEB/cc

cc w/o enclosure
Hon. Andres Friedlis



Lionel E. Bashore, Esq.
lionel@bglawpc.com

Kevin S. Green, Esq.
kevin@bglawpc.com

BASHORE GREEN LAW GROUP

Via Facsimile: (517) 335-6696

RECEIVED

September 4, 2008

SEP 04 2008

State Office of Administrative Hearings and Rules
Ottawa State Office Building
611 West Ottawa Street, 2nd Floor
Lansing, Michigan 48933

STATE OFFICE OF ADMINISTRATIVE
HEARINGS & RULES

Re: Diamond Office Plaza
Docket No. 2008-1017

Dear Sir or Madame,

We have been retained by PL&L Investments L.L.C., in the above referenced matter. It is our understanding that there is a hearing scheduled for [REDACTED]. We respectfully request that this hearing be adjourned a few weeks to allow our office to properly prepare for the hearing. Please include us in any further correspondence and/or notices regarding this matter.

Please contact our office with any questions. Your anticipated cooperation is appreciated.

Very truly yours,

BASHORE GREEN LAW GROUP

By: Lionel E. Bashore

LEB/cc

cc: PL&L Investments L.L.C.

cc: PRB
B.D.

RECEIVED

JUL 24 2008

BUREAU OF CONSTRUCTION CODES / PLAN REVIEW
LANSING, MI 48906

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review
P.O. Box 30255, Lansing, MI 48906
517-241-9328
www.michigan.gov/bcc

133

81275

Application Fee: \$300.00

Authority: 1966 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.
---	---

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION			
FACILITY NAME <i>Diamond office plaza</i>		STREET / SITE ADDRESS <i>49100 Wandyke 48316</i>	
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Township Of: <i>Shelby</i>		COUNTY <i>Macomb</i>	
Estimated Project Cost \$ <i>20,000</i>		Estimated Cost of Compliance \$ <i>50,000</i>	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use		Building Permit / File Number <i>N.A.</i>	
Is a Temporary Exception Requested? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED? PERMANENT	USE GROUP B
		CONSTRUCTION TYPE 5B	
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) <i>1104.4, 604.5.1 - ICC ANSI A117.1</i>			
Reason for Non-Compliance <i>EXISTING BASEMENT WAS FINISHED WITHOUT REQUIRED PERMITS, THUS THIS OFFICE HAD NO PLAN REVIEW OPPORTUNITY. TO DATE NO PERMIT HAS BEEN ISSUED DUE TO INCOMPLETE PLANS AND LACK OF BARRIER FREE COMPLIANCE.</i>			
NAME HARRY D. REESE		ENFORCING AGENCY SHELBY TOWNSHIP BUILDING DEPT.	
ADDRESS 52700 VAN DYKE		CITY SHELBY TOWNSHIP	TELEPHONE NUMBER (Include Area Code) 586-731-5969
		ZIP CODE 48316	FAX NUMBER (Include Area Code) 586-803-2099
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <i>Harry D. Reese</i>			
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME <i>Antonio Seria</i>		MICHIGAN LICENSE NUMBER <i>027730</i>	FIRM NAME <i>Seria & Associates</i>
ADDRESS <i>189 Big Beaver Troy MI</i>		STATE <i>MI</i>	TELEPHONE NUMBER (Include Area Code) <i>48083 248-457-6903</i>
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <i>Philip Leone</i>		COMPANY NAME <i>PL&L INVESTMENT</i>	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED) <i>[REDACTED]</i>
ADDRESS <i>49312 Wandyke Shelby MI</i>		STATE <i>MI</i>	TELEPHONE NUMBER (Include Area Code) <i>586-254-2500</i>
		ZIP CODE <i>48316</i>	FAX NUMBER (Include Area Code) <i>586-254-1268</i>
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.			
APPLICANT SIGNATURE (Must be an original signature) <i>[Signature]</i>		DATE <i>7-16-08</i>	

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Docket No. 2008-1067

Christian Freedom International
215 Ashmun Street
Sault Ste Marie, MI
Applicant

Agency No. 81515

Agency: Bureau of Construction
Codes

Case Type: Barrier Free Design
Exception Request

Issued and entered
this 29th day of November, 2008
by J. Andre Friedlis
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL HISTORY

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. On September 2, 2008, the Applicant waived the Applicant's right to an in-person hearing and agreed to provide answers by sworn statement. Accordingly, the hearing scheduled for September 16, 2008 was cancelled. On September 24, 2008, the Department's Plan Review Division sent questions to the Applicant. These were answered on November 3, 2008. On November 7, 2008, I sent the Applicant additional questions. These were answered on November 24, 2008.

ISSUE

Should the Board grant the Applicant an exception from Section 1105.1 of the 2003 Michigan Building Code (MBC)?

FINDINGS OF FACT

In February 2008, the Applicant completed a building renovation costing more than \$500,000 on a 123 year old structure. The building has a basement and three floors. The basement is used for storage; the first floor for retail; the second floor for staff offices; the third floor for executive offices. Two to three staff members operate the first floor retail operation. There is more traffic during the summer months. Much of the Applicant's business takes place through catalogue and internet sales.

Prior to the Applicant's purchase, the second and third floors were used for apartments and the first floor for retail. The basement was previously used for storage.

As noted in the answer to Question 8 on the answers sent November 3, 2008, the renovation addressed the entire building:

8. List in detail all of the proposed renovation.

Answer: The renovation is complete. The entire interior of the building was removed. New construction of all three floors was extensive, making an attractive retail space on the first floor, and 21st century office space on the second and third floors, with internet connectivity, cable and communications capability. There are three offices on the second floor, and a large open work space. The third floor has three executive offices and an open board room. Each floor has a full bathroom. The basement was cleaned but not significantly changed.

The issue concerns building access. The Applicant proposes adding a ramp to the front entrance where retail traffic enters the building. This ramp will be at a 10.7

slope from the front door to the public sidewalk. The ramp will be 5 feet wide at the bottom, taper to 4 feet wide as it passes a pillar, and then widen to 5 feet wide at the door. There will not be a door threshold area.

There is a ramp at the rear of the building existing prior to the renovation, but it is 10 feet 7 inches long with no top or bottom landings. This ramp cannot be modified to a compliant status due to encroachment on city property. Making this ramp compliant would also cost \$70,000. But more important is the consideration that most traffic enters the building at the front. The city has approved modifying the front entrance as described above.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated time period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when the Applicant demonstrates compelling need. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules that have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

Section 1105.1 addresses building access:

In addition to accessible entrances required by Sections 1105.1.1 through 1105.1.6, at least 50 percent of all public entrances shall be accessible.
[Exceptions omitted].


The Applicant has presented compelling need based on limited space. The main building entrance is at the front. By removing the step and adding a ramp people with disabilities will have building access even though the access is not fully compliant. While the Applicant formerly believed the rear entrance could be made accessible, it was later learned the ramp would encroach on city property. The Applicant's proposal to modify the front entrance is the best solution available given the building's placement on the site.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 1105.1 of the Michigan Building Code 2003.

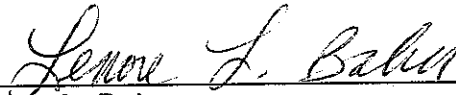
As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Todd Cordill.


J. Andre Friedlis
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 25th day of November, 2008.



Lenore L. Baker
State Office of Administrative Hearings and Rules

Darien M Neveu
City of Sault Ste Marie
325 Court Street
Sault Sainte Marie, MI 49783

Todd Cordill
State of Michigan
BCC Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864

Robert W Sweet
Christian Freedom International
215 Ashmun Street
Sault Sainte Marie, MI 49783



"Remember the prisoners as if in prison with them and those who are persecuted"

RECEIVED

November 19, 2008

NOV 24 2008

J. Andre Friedlis
Administrative Law Judge
State Office of Administrative Hearings and Rules
611 Ottawa St.
P.O. Box 30695
Lansing, MI 48909

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS & RULES**

Dear Judge Friedlis:

Here are the answers to the questions in your letter dated November 7, 2008. We contracted with U.P. Engineers when we were first discussing the renovation of the building. We have followed their recommendations and rely on their judgment. Also, we did send the same information you received to Mr. Neveu. We will do the same for this submission. Thank you for your consideration of our request.

Answers to questions:

1. The City of Sault Ste Marie has not established a historic district at this time. Chippewa County has recently established a Historic Commission but to date a historic district has not been established.
2. There is typographical error in the sentence and the word "three" should read "there".
3. The Slope of the Ramp would be 10.7 percent at the front entry door. The ramp would be installed from the threshold of the entry door to the ROW at the public sidewalk.
4. The ramp will be 5 feet in width at the bottom at the city ROW. The ramp tapers to 4 feet 7 inches as it passes an existing column and then widens back to 5 feet in width at the door.
5. The ramp would not be provided with a stoop area at the door threshold. The ramp would start at the door and proceed down to the sidewalk which would serve as a landing area.
6. The existing ramp at the rear of the building was not renovated and existed prior to construction. The Ramp is 10 Feet 7 inches long and 5 feet 4 inches wide. There is no top stoop area or bottom landing area provided for the enclosed ramp area. An exterior door is present at the bottom of the ramp and an interior door at the top.

7. The rear door exits to the east where a stoop area would be provided, then the ramp itself would travel north to a landing turn and head back to the south. The developed ramp area would be approximately 8 feet shorter than originally anticipated because of the 4 ft encroachment of the city property line into the north wall of the building.

Sincerely yours,

Robert W. Sweet, Jr.
Executive Vice President
Christian Freedom International
215 Ashmun St.
Sault Ste. Marie, MI 49783
(906) 253-2336

P.S. Mr. Jacobson is out of town, so I am sending the response you requested.

Cc: Plan Review Division
Darien M. Neveu
City of Sault Ste. Marie
325 Court Street
Sault Ste. Marie, MI 49783

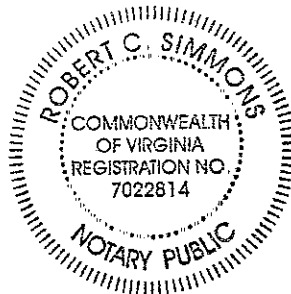
Respondent (Signature)

Before me, Robert C Simmons, a Notary Public in and for Shenandoah County, Commonwealth of Virginia personally appeared Robert W. Sweet, Jr. and he being first duly sworn by me upon his oath says that the facts alleged in the foregoing instrument are true.

Notary Public (Signature)

May 31 2010

My Commission expires (Date)



RECEIVED

NOV 03 2008

STATE OFFICE OF ADMINISTRATIVE
HEARINGS & RULES

SWORN STATEMENT

IN THE MATTER OF

81515 CHIPPEWA

CHRISTIAN FREEDOM INTERNATIONAL BUILDING

215 ASHMUN ST.

SAULT STE. MARIE, MI 49783

CHIPPEWA COUNTY

I, James B. Jacobson provide the following information under oath. All information is true, accurate and complete:

1. State your full name, address and telephone number.

Answer: James B Jacobson.

215 Ashmun St.

Sault Ste. Marie, MI 49783

2. Are you the building owner? If not, state your interest in this matter.

Answer: Christian Freedom International owns the building, and I am the President.

3. Describe the nature of this facility and activities that take place on each floor and size of each floor.

Answer: Basement – storage; 1st Floor – Retail store; 2nd Floor – CFI Staff Offices; 3rd Floor – CFI Executive Offices.

4. Is there a seasonal fluctuation in the number of persons that use the facility?
Please describe.

Answer: There is more retail traffic between the months of June through August. Traffic is very limited during the balance of the year. The store is for display purposes since we do much of our business through catalogue

and internet sales. We have between two and three sales staff during store hours.

5. What was the previous use of this building on each floor?

Answer: Basement – storage; 1st Floor – retail store; 2nd Floor – residential apartment; 3rd Floor – residential apartment;

6. Is this a historic building? If yes, provide details.

Answer: Yes. The building was constructed in 1885 and is one of the oldest buildings in Sault Ste. Marie. Attached is a picture taken prior to 1900.

7. What is the projected renovation cost?

Answer: The cost of renovation exceeded \$500,000.

8. List in detail all of the proposed renovation.

Answer: The renovation is complete. The entire interior of the building was removed. New construction of all three floors was extensive, making an attractive retail space on the first floor, and 21st century office space on the second and third floors, with internet connectivity, cable and communications capability. There are three offices on the second floor, and a large open work space. The third floor has three executive offices and an open board room. Each floor has a full bathroom. The basement was cleaned but not significantly changed.

9. What is the status of the construction?

Answer: The construction and renovation was completed in February 2008.

10. List the entrances of this building and where they are located?

Answer: There are three entrances on the first floor. The front entrance abuts the city sidewalk on Ashmun St. and is where we propose to place a short incline to give access to the first floor. There is a small 5" step to the entrance of the retail store, and we have proposed making that a ramp as our exception proposal suggests. The rear of the building has two entrances, one with a ramp that exceeds recommended slope and the second door that has a 7 inch step.

11. List those items, which do not comply with the barrier free design requirements for entrances:

Answer: The front has a step so it does not meet the barrier free design. There are two entrances in the back, one has a step and the other has an existing ramp that exceeds the maximum slope.

12. Describe in detail the renovations, which would have to be done to create an accessible entrance:

Answer: We would propose to eliminate the step at the front entrance and replace that with an incline.

13. What is the estimated cost to provide an accessible entrance?

Answer: U.P. engineers estimated that an additional ramp on the back of the building would cost \$70,000, and would encroach on city land. The City has approved modifying the front door access as described in our proposal.

14. Explain your reasons of the compelling need for an exception from providing an accessible entrance:

Answer: Our intention is to modify a building that is 123 years old with another accessible entrance, in addition ramp at the back of the building. We would replace the single step at the front of the building which abuts

the city sidewalk with a short ramp. We are eager to make this building more accessible, without expending excessive resources. We are a non-profit organization and our support comes from voluntary donations. As such we are very careful with these expenditures, while at the same time doing everything possible to comply with state and federal regulations. It is our intent to create an inviting and appropriate access to 215 Ashmun St.

15. Our records indicate there is a previous exception granted for this project on January 18, 2008 under exception no. 72347 Chippewa. On that record it is stated that the entrance is accessible. Explain why it is different now.

Answer: At the time of submittal it was believed that a ramp could be constructed on the rear of the building to provide accessibility. Subsequently it was determined that the property line on the North side of the building is approximately 4 ft 1/4 inch into north wall of the building. This limitation in available property at the rear entrance of the building would require a ramp that is 8 ft shorter in length. It was determined a ramp could not be constructed that would meet slope requirements with the limited area available between the existing building and the East rear and North side property lines.

16. How old is the building?

Answer: It was built in 1885 and is 123 years old.

Respondent (Signature)

Before me Amy Jo Lorraine Jones, a Notary Public in and for Chippewa County, State of Michigan personally appeared Jim Jacobson and he/she being first duly sworn by me upon his oath says that the facts alleged in the foregoing instrument are true.

Notary Public (Signature)

My Commission Expires January 22, 2015

AMY-JO L. JONES, NOTARY PUBLIC
STATE OF MICHIGAN, COUNTY OF CHIPPEWA
MY COMMISSION EXPIRES JAN. 22, 2015
ACTING IN CHIPPEWA COUNTY



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

PETER L. PLUMMER
EXECUTIVE DIRECTOR

November 7, 2008

James B. Jacobson
Christian Freedom International Bldg.
215 Ashmun St.
Sault Ste. Marie, MI 49783

Re: 2008-1067
Christian Freedom International Building

Dear Mr. Jacobson:


After reviewing your response received November 3, 2008, I have additional questions.

Please reply in Affidavit form as you did before **and this time copy the Plan Review Division and Mr. Neveu.**

1. If this is a historic building, have you obtained permission to modify the building's exterior pursuant to the Local Historic Districts Act 1970 PA 169, MCL 399.201 *et seq.*?
2. I don't understand your answer to Question 4. Please explain. Are you saying you received three customers between June and August?
3. What will be the slope of the ramp to the front entrance once the step is removed?
4. What will be the width of the front ramp?
5. Will the front entrance meet all barrier free requirements other than the slope?
6. What is the slope for the rear entrance ramp? Width of this ramp?
7. I don't understand your answer to Question 15. If the north side property line is 4 feet $\frac{1}{4}$ inch inside the building, how can any ramp be built? How can there be area between the building and north side if the north side is 4 feet $\frac{1}{4}$ inch inside the building?

Please file your notarized response within 15 days from the date of this letter and copy the Plan Review Division and Mr. Neveu

Sincerely,


J. Andre Friedlis
Administrative Law Judge

JAF/llb

cc: Plan Review Division
Darien M. Neveu, Building Official



U.P. ENGINEERS & ARCHITECTS, Inc.

ENGINEERING ARCHITECTURE PLANNING SURVEYING ENVIRONMENTAL

July 10, 2008

To: Darien Neveu
Building Inspector
325 Court Street
Sault Ste Marie, Michigan 49783

Re: CFI Building Renovation
215 Ashmun Street
Sault Ste. Marie, Michigan, 49783

Christian Freedom International (CFI) acquired a building on 215 Ashmun Street built in 1887. We have renovated the interior and wish to make it as barrier free as we can, within the constraints of the existing structure.

Therefore we are requesting a Barrier Free Design Rule Exception for a B / Business occupancy. We are appealing the Michigan Building Code "Section 3409 Accessibility for Existing Buildings."

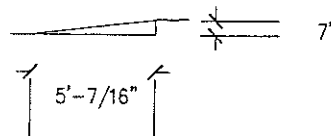
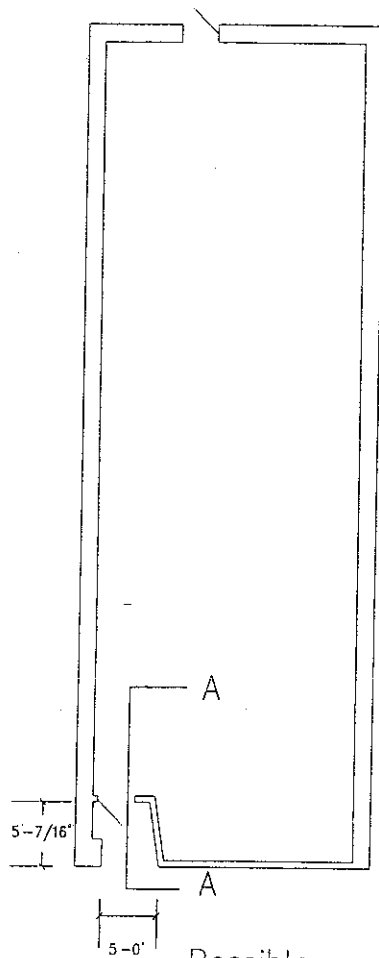
Complying with the code would place a significant financial hardship on CFI of more than \$70,000, and in addition would require placement of ramp at the rear of the building on property not owned by CFI. In addition, it would provide ingress at the rear of the building, rather than from the sidewalk at the front of the building where most foot traffic would be most likely to enter the building. There are no side entrances to the building.

We would propose access to the building by a concrete access ramp from the front entry to the "City Right of Way" with a 10.7 percent slope. Although this does not meet code, it is reasonable way for access to the building given the age of construction and other external limitations.

UPEA, on behalf of the owner, requests that this appeal be granted for a Barrier Free Design Rule Exception.

Sincerely,


George A. Cowell, P.E.



Ramp grade 10.7% without stoop area

Section A-A



**U.P. ENGINEERS &
ARCHITECTS, INC.**

Houghton Norway Marquette Sault Ste Marie Marinette

CFI Entrance
Not To Scale

DRAWN: GAC

DATE: 6/18/2008

JOB No:

DRAWING: CFI

U.P. Engineers & Architects, Inc.

707 Ashmun Street
(906)635-0511
(800)867-0511 (WATS)
(906) 635-0612 (FAX)

LETTER OF TRANSMITTAL

To: CFI
.215 Ashmun Street
Sault Ste. Marie, MI 49783

Date: 7/15/2008	
Attention: Bob Sweet	
RE: Christian Freedom International Building	

If enclosures are not as noted, please inform us immediately
If checked, please acknowledge receipt of enclosures.

WE ARE SENDING YOU ☒ Herewith
☐ Shop Drawings ☐ Prints
☐ Bulletin ☐ Change Order

☐ Under Separate Cover via _____ the following:
☐ Plans ☐ Samples ☐ Specifications
☐ _____

COPIES	DATE	NO.	DESCRIPTION
1			Application for Barrier Free Design Rule Exception
1			Original Sealed Plans for submittal and possible ramp location
1			Cover letter for submittal to City and Copy for State

THESE ARE TRANSMITTED FOR THE PURPOSE(S) CHECKED BELOW:

☐ For Approval ☐ Reviewed no exceptions noted ☐ Not Approved – Resubmit
☒ For Your Use ☐ Reviewed with corrections noted ☐ No Action Required
☐ As Requested ☐ Revise and send revised copy

☐ For Review and Comment ☐ _____
☐ FOR BIDS DUE _____, 2008 ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS: Please find enclosed a completed form for submittal to the City of Sault Ste. Marie. The applicant section should be filled in by CFI.

The application and all support documents should be delivered to the City of Sault Ste. Marie along with a check in the amount of \$300.00 dollars made out to the State of Michigan. The City will complete their section of the application and transmit the information to the Michigan Department of Labor & Economic Growth.

(with enclosures)
COPY TO: file
SIGNED: Dwight A. Connor

Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review
P.O. Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

133

81 515

Application Fee: \$300.00

Authority: 1988 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.
---	--

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990. 42 U.S.C. 12204.

Note: The applicant is responsible for all fees applicable to this application.

FACILITY INFORMATION				
FACILITY NAME Christian Freedom International		STREET / SITE ADDRESS 215 Ashmun Street		
NAME OF CITY, VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: Sault Ste Marie		COUNTY Chippewa		
Estimated Project Cost \$ 413,000.00		Estimated Cost of Compliance \$ 70,000.00		
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)				
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input checked="" type="checkbox"/> Change of Use		Building Permit / File Number <u>PS07-120</u>		
Is a Temporary Exception Requested? <input type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	USE GROUP <u>M/B</u>	CONSTRUCTION TYPE <u>III B</u>
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) <u>SECTION 1105.1</u> Reason for Non-Compliance <u>BUILDING HAS NOT BEEN PROVIDED WITH ACCESSIBLE PUBLIC ENTRANCE.</u>				
NAME <u>DARLEN M. NEVEN</u>		ENFORCING AGENCY <u>CITY OF SAULT STE MARIE</u>		TELEPHONE NUMBER (Include Area Code) <u>906 632-5100</u>
ADDRESS <u>325 COURT STREET</u>		CITY <u>SAULT STE MARIE</u>	ZIP CODE <u>49783</u>	FAX NUMBER (Include Area Code) <u>906 635-5606</u>
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <u>[Signature]</u>				
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)				
NAME George A. Cowell, PE		MICHIGAN LICENSE NUMBER 32360	FIRM NAME UP Engineers & Architects, Inc	
ADDRESS 707 Ashmun Street	CITY Sault Ste Marie	STATE Michigan	ZIP CODE 49783	TELEPHONE NUMBER (Include Area Code) (906) 635-0511
APPLICANT (Note: All correspondence will be sent to this address)				
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <u>Robert W. Sweet, Jr</u>		COMPANY NAME <u>Christian Freedom Int.</u>		SOCIAL SECURITY NUMBER OR FEIN (REQUIRED) <u>[REDACTED]</u>
ADDRESS <u>215 Ashmun St.</u>	CITY <u>Sault Ste Marie</u>	STATE <u>MI</u>	ZIP CODE <u>49783</u>	TELEPHONE NUMBER (Include Area Code) <u>906 253-2336</u>
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.				FAX NUMBER (Include Area Code) <u>906 253-2336</u>
APPLICANT SIGNATURE (Must be an original signature) <u>[Signature]</u>			DATE <u>July 31, 2008</u>	

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Learning Experience, The
16635 Ridge Road
Northville, MI
Applicant

Docket No. 2008-1370

Agency No. 82566

Agency: Bureau of Construction Codes

Case Type: Barrier Free Design Exception
Request

RECEIVED

NOV 20 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Issued and entered
this 20th day of November, 2008
by Renée A. Ozburn
Administrative Law Judge

5. EXCEPTION APPLICATIONS
04. 82566

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL HISTORY

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended, MCL 125.1501 *et seq*, and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on October 29, 2008, in Lansing, Michigan. Jennifer Koscielny appeared on behalf of The Learning Experience. Usha Menon appeared on behalf of the Plan Review Division of the Bureau of Construction Codes.

ISSUE

Whether the Applicant should be granted an exception from Section 1104.3 of the 2003 Michigan Building Code (MBC).

FINDINGS OF FACT

1. The Applicant is a child development center located in Northville, Michigan, intended to ultimately serve up to 156 children from ages 6 weeks to 5 years.

2. The child development center is new construction. The center occupies approximately 10,000 square feet in a one story building. The Applicant was awaiting a certificate of occupancy at the time of the exception request hearing on October 29, 2008.

3. The Applicant structure has various classrooms. One room in the center is known as "Make Believe Boulevard" This is an indoor play area designed for dramatic play and pretend activity. The Make Believe room/structure is designed to replicate a small village. This play area has two levels. A stairway conforming to code requirements for riser, tread dimensions and railings is provided at one end of the structure and gives the appearance of leading to a second story. At the top of the riser there is a small hallway that leads only to a slide. There are no other openings or rooms on the second level. All dramatic play is done on the first level. All children, including children with disabilities, will be able to fully participate in the dramatic play and pretend activities of the playroom. All staff of the center must be able bodied to the extent that they can lift and carry small children.

4. The Make Believe Boulevard is a structure designed and trademarked by the Learning Experience and used in facilities throughout the United States.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated period and upon stated conditions, and require alternatives when exceptions are granted.

An exception request is granted only when compelling need is demonstrated by the Applicant. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules which have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.

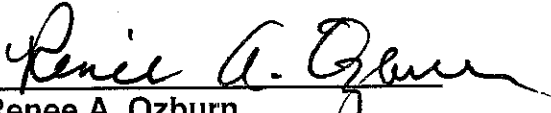
The Applicant has proven that it is a practical difficulty to redesign the Make Believe Boulevard to eliminate the stairs leading only to a slide. The play structure's primary purpose is to provide a dramatic play and pretend area for children. All children will still be able to participate in this pretend play. The play structure is a trademarked design with the slide, and stairway leading to the slide, built into the structure. There do not appear to be acceptable alternatives for providing access to the upper level hallway and slide. Providing full access for the primary play usage intended for the structure justifies granting an exception to the Section 1104.3.1 requirements.

RECOMMENDED DECISION

I recommend the Board grant the Applicant an exception from Section 1104.3.1 of the 2003 MBC.

As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


Renee A. Ozburn
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 20th day of November, 2008.



Lenore Baker

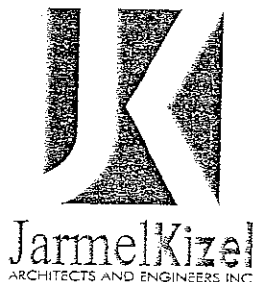
State Office of Administrative Hearings and Rules

Daniel Smith
Northville Township
44405 Six Mile Road
Northville, MI 48168

Peter Stanaj
Trans America Const Co.
1171 Long Lake Shore Drive
Bloomfield Hills, MI 48302

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864





September 10, 2008

Michigan Dept. of Labor & Economic Growth

Bureau of Construction Codes

P O. Box 30255, Lansing, MI 48909

**RE: The Learning Experience
Northville, MI**

Project Number: GWHTAC-S-07-036

Revised 9/10/08 (*Revisions have been underlined & italicized*)

Dear Sir/Madam:

I am the Architect of Record for the above captioned project and am writing to you regarding the need for accessibility in an interior play area for a childcare center

The Learning Experience is proposed to be approximately 10,000 square feet within a one-story building. One room within the center, shown on the attached documents, is named Make Believe Boulevard. This room is an indoor playroom that includes built-in-place playground equipment. This built-in-place playground takes on the appearance of a mini downtown that allows children to role play and pretend they have jobs such as postman, policeman, fireman, etc. These rooms and their design are a trademark of The Learning Experience and it has been constructed in many facilities in New Jersey, Michigan, North Carolina, Pennsylvania, New York and other jurisdictions that utilize some form of the Accessibility Code. Attached is a photograph from other facilities.

The rooms have a 10'-0" ceiling height and the built-in-place playground equipment has two levels with a floor to floor height of 4'-8". A stair, that meets proper code requirements for riser and tread dimensions as well as railings, is provided on one end of the built-in-place playground equipment and a slide that terminates in a ball pit is provided on the other.

We understand that section 1103.2.1, Public Act #245, 1999 as amended and Public Act #1, 1966 as amended and Section 1104.3, of the Michigan Building Code, does require access to the upper level of the indoor play equipment. However, The Learning Experience is not licensed for non-ambulatory children, therefore, there is not an issue with accessibility. Additionally, in the event that an ambulatory child was visiting the building, additional accessible play area is available at the ground level. It is for these two reasons that we are seeking a variance from section 1103.2.1, Public Act #245, 1999 as amended and Public Act #1, 1966 as amended, of the Michigan Building Code

ARCHITECTURE
ENGINEERING
SPACE PLANNING
INTERIOR DESIGN
IMPLEMENTATION SERVICES

PRINCIPALS
MARVIN JARMEL, IIDA
MATTHEW B. JARMEL, AIA, MBA
IRWIN H. KIZEL, AIA, PP
RICHARD A. JARMEL, PE

NJ STATE BOARD OF ARCHITECTS
CERTIFICATE OF AUTHORIZATION
NUMBER 161

NJ STATE BOARD OF
PROFESSIONAL ENGINEERS AND
LAND SURVEYORS
CERTIFICATE OF AUTHORIZATION
NUMBER GA 278177

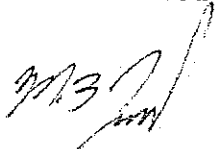
42 OKNER PARKWAY
LIVINGSTON
NEW JERSEY 07039-1604
TEL: 973-994-9669
FAX: 973-994-4069

www.jarmelkizel.com

The Learning Experience
Northville, MI
September 10, 2008
Page 2 of 2

Thank you for your consideration on this matter. Should you have any questions or concerns as they relate to our application, please contact my office. I look forward to your response and being scheduled for a hearing.

Very truly yours,
Jarmel Kizel Architects and Engineers, Inc.



Matthew B. Jarmel, AIA, MBA
Principal

Michigan License #1301052189

Cc: Pjeter Stanaj – Trans America Construction Co.
Cheryl Hanenberg – The Learning Experience

W:\Projects\Projects 2007\GWHITAC-S-07-036 - TLE NORTHVILLE MI\Letters\Dept. of Labor & Economic Growth 09-10-08.doc

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SEP 16 2008

Application for Barrier Free Design Rule Exception

133

Michigan Department of Labor & Economic Growth

Bureau of Construction Codes / Plan Review Div

P O Box 30255, Lansing, MI 48909

517-241-9328

www.michigan.gov/bcc

BUREAU OF CONSTRUCTION CODES

PLAN REVIEW DIVISION

82566

Application Fee: \$300.00

Authority: 1966 PA 1
 Completion: Mandatory
 Penalty: Exception will not be granted

The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.

The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990, 42 U S C 12204

Trans Info: 133 14292759-1 09/15/08

CNA#: 22805 Amt: \$300.00

ID: TRANS-AMERICA CONSTRUCTION CO

Note: The applicant is responsible for all fees applicable to this application

FACILITY INFORMATION			
FACILITY NAME <u>The Learning Experience</u>		STREET / SITE ADDRESS <u>14635 Ridge Road</u>	
NAME OF CITY VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Township of: <u>Northville</u>		COUNTY <u>Wayne</u>	
Estimated Project Cost \$ <u>700,000</u>		Estimated Cost of Compliance \$	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number	
Is a Temporary Exception Requested? <input type="checkbox"/> No <input type="checkbox"/> Yes		PERIOD OF TIME REQUESTED?	CONSTRUCTION TYPE
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) Reason for Non-Compliance <u>See attached 1104.3 connected spaces</u> <u>and Public Act No. 1 1966 as amended</u> <u>Public Act #245.1999</u>			
NAME <u>DANIEL SMITH</u>	ENFORCING AGENCY <u>Northville Township</u>	TELEPHONE NUMBER (Include Area Code) <u>(248) 348-5830</u>	
ADDRESS <u>44405 Six Mile Rd</u>	CITY <u>Northville</u>	ZIP CODE <u>48168</u>	FAX NUMBER (Include Area Code) <u>(248) 348-5823</u>
BUILDING OFFICIAL SIGNATURE (Must be an original signature) <u>[Signature]</u>			
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME <u>Matthew B. Jarmel AIA MBA</u>	MICHIGAN LICENSE NUMBER <u>1301052189</u>	FIRM NAME <u>Jarmel Kizel Architect & Engineering</u>	
ADDRESS <u>24 Ohner Parkway</u>	CITY <u>Livingston</u>	STATE <u>NJ</u>	TELEPHONE NUMBER (Include Area Code) <u>07039 (973) 994-9669</u>
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE <u>PETER STANAT</u>	COMPANY NAME <u>Trans America Const Co</u>	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED) <u>[REDACTED]</u>	
ADDRESS <u>1771 Long Lake Shore Dr</u>	CITY <u>Bloomfield</u>	STATE <u>MI</u>	TELEPHONE NUMBER (Include Area Code) <u>(248) 640-6777</u>
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge.			FAX NUMBER (Include Area Code) <u>(248) 338-7121</u>
APPLICANT SIGNATURE (Must be an original signature) <u>[Signature]</u>			DATE <u>9/19/08</u>

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Abbott Manor
910 Abbott Rd.
East Lansing, MI
Applicant

Docket No. 2008-1354

Agency No. 82697

Agency: Bureau of Construction Codes

Case Type: Barrier Free Design Exception
Request

5. EXCEPTION APPLICATIONS
05, 82697

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NOV 20 2008

BUREAU OF CONSTRUCTION CODES
PLANNING DIVISION

Issued and entered
this 20th day of November, 2008
by Renée A. Ozburn
Administrative Law Judge

REPORT OF THE ADMINISTRATIVE LAW JUDGE

PROCEDURAL HISTORY

This is a proceeding held pursuant to the authority granted in Section 5 of 1966 PA 1, as amended, MCL 125.1351 *et seq*; 1972 PA 230, as amended, MCL 125.1501 *et seq*; and 1969 PA 306, as amended, MCL 24.101 *et seq*.

The purpose of this review is to examine an application for a temporary exception from requirements contained in the Barrier Free Design Rules of the State Construction Code. A hearing was held on October 29, 2008, in Lansing, Michigan. Andrew Branoff appeared on behalf of Abbott Manor. Usha Menon appeared on behalf of the Plan Review Division of the Bureau of Construction Codes.

ISSUE

Whether the Applicant should be granted a temporary exception from Section 1107.6.2.11 of the 2003 Michigan Building Code (MBC).

FINDINGS OF FACT

1. The Applicant is a three floor office building being renovated into a residential apartment building for students

2. At the time a permit was first issued for the renovations, it appeared that the project was in compliance with barrier free design requirements. However, at the time the second permit was taken out the Applicant was informed that it needed one Type A, barrier free unit on the first floor.
3. The Applicant plans to convert first floor apartment #104 to meet the requirements sometime before August 2009. The plan is to accomplish the conversion after students vacate the premises for the summer.
4. By Application dated September 4, 2008, the Applicant seeks a one year exception to the requirement that one Type A unit be available on the first floor.

CONCLUSIONS OF LAW

Act 1 of the Public Acts of 1966, as amended, states that the barrier free design requirements were created "to provide for the accessibility and utilization by physically limited persons of public facilities and facilities used by the public." The Barrier Free Design Board is authorized by the Act to grant or deny requests for exceptions to any or all of the barrier free design requirements for a stated period and upon stated conditions, and require alternatives when exceptions are granted

An exception request is granted only when compelling need is demonstrated by the Applicant. The Applicant has the ultimate burden of proving that an exception should be granted. An exception is a special license to deviate from rules which have uniform applicability to all facilities. Compelling need may be present if the literal application of a specific barrier free design requirement would result in

exceptional, practical difficulty to the Applicant or where compliance would not be economically, technologically, structurally, or administratively feasible.


The Applicant has proven that it would be practically difficult, and unnecessary, to immediately move current residents out of an occupied unit to convert the unit. The Applicant's plan to renovate the unit within the upcoming 12 months is a reasonable alternative that would not prevent necessary access to any current residents. The Applicant has proven that a temporary exception is a reasonable and acceptable alternative.

RECOMMENDED DECISION

I recommend the Board grant the Applicant a temporary exception from Section 1107.6.2.1.1 of the 2003 MBC.


As a condition to granting this exception, the Board's Final Order, issued after review of this recommendation, shall be displayed in a conspicuous public location of the building.

A party may file comments, clarifications or objections to this Report, including written arguments, with the Bureau of Construction Codes, P.O. Box 30254, Lansing, Michigan 48909, Attention: Irvin Poke.


Renee A. Ozburn
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 20th day of November, 2008.

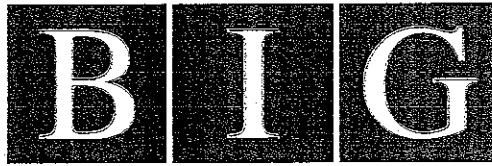


Lenore Baker
State Office of Administrative Hearings and Rules

Andrew K Branoff
Branoff Investment Group
3757 Kiskadee Drive
East Lansing, MI 48823

Jim Hoffman
City of East Lansing
410 Abbot Road
East Lansing, MI 48823

Todd Cordill
Bureau of Construction Codes
Plan Review Division
2501 Woodlake Circle
Okemos, MI 48864



BRANOFF INVESTMENT GROUP

Thursday, September 18, 2008

To: City of East Lansing

Building & Code Dept.

Att: Jim Hoffman

cc: Ed Kostrzewski

410 Abbot Road

East Lansing, MI 48823

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SEP 23 2008

BUREAU OF CONSTRUCTION CODES
PLAN REVIEW DIVISION

Re: Application for Barrier Free Design Rule Exception

Dear Jim,

Enclosed you will find the Application for Barrier Free Design Rule Exception, the \$300.00 application fee check payable to the State of Michigan and the architectural drawings/notes/specifications regarding the upcoming barrier-free conversion of unit #104 at 910 Abbot Road.

As inquired within the application, we request a temporary extension to convert unit #104 at 910 Abbot to a barrier-free unit. As the unit is currently occupied by a non-handicap person (as is the rest of the building), we request that the State of Michigan allow us to complete this conversion during the summer tenant turn-over period (i.e. between July 2009 - August 2009).

As you are aware, the building was recently renovated with all necessary permits/inspections and was outfitted with both interior and exterior upgrades - in addition to structural improvements (i.e. new underground plumbing, foundation stabilization, etc). Per my recent discussions with my architect, prior to our recent acquisition of the building - it is apparent that 910 Abbot was historically in non-compliance and our cosmetic interior upgrades did not change this situation; as we were unaware of the non-compliance until after the project was completed (or very near completion). We hope that our temporary extension request is granted and that we are able to complete this barrier-free conversion within a practical timeline.

Best Regards,

A handwritten signature in black ink, appearing to read 'Andrew K. Branoff'.

Branoff Investment Group, Principal

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Application for Barrier Free Design Rule Exception
Michigan Department of Labor & Economic Growth
Bureau of Construction Codes / Plan Review Divis
P O Box 30255, Lansing, MI 48909
517-241-9328
www.michigan.gov/bcc

133

82 697

Application Fee: \$300.00

Authority: 1986 PA 1 Completion: Mandatory Penalty: Exception will not be granted	The Department of Labor and Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need help with reading, writing, hearing, etc. under the Americans with Disabilities Act, you may make your needs known to this agency.
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The Barrier Free Design Board has no authority over the federal standards contained in the Americans with Disabilities Act of 1990 42 U S C 12204

Note: The applicant is responsible for all fees applicable to this application.

Trans Info: 133 14303119-1 09/19/08

CHK#: 1899 Amt: \$300.00

ID: BRANDOFF ASSET MGMT

FACILITY INFORMATION			
FACILITY NAME ABBOT MANOR		STREET / SITE ADDRESS 910 ABBOT RD	
NAME OF CITY VILLAGE OR TOWNSHIP IN WHICH FACILITY IS LOCATED <input checked="" type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Township Of: EAST LANSING		COUNTY INGHAM	
Estimated Project Cost \$ 715,000.00		Estimated Cost of Compliance \$ 10,000.00	
BUILDING PERMIT (To be completed by the administrative authority responsible for issuing the building permit for this project)			
<input type="checkbox"/> New Building <input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Change of Use		Building Permit / File Number	
Is a Temporary Exception Requested? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes		PERIOD OF TIME REQUESTED? UNTIL NEXT SUMMER	USE GROUP R-2
		CONSTRUCTION TYPE VB	
Project Does Not Comply With Barrier Free Design Requirements As Follows: Michigan Building Code Section(s) 1107.6.2.1.1 / 2003 CODE Reason for Non-Compliance PLANS FOR FIRST PERMIT SHOWED 3 EXISTING BARRIER FREE UNITS THAT WERE NOT BEING ALTERED IN THE RECONSTRUCTION OF THE BALANCE OF THE FIRST FLOOR. A SECOND PERMIT WAS TAKEN OUT FOR REPAIRS TO THE 3 B.F. UNITS, AND IT WAS THEN WE FOUND OUT THEY WERE NOT B.F.			
NAME JIM HOFFMAN		ENFORCING AGENCY CITY OF EAST LANSING	TELEPHONE NUMBER (Include Area Code) 517.319.6871
ADDRESS 410 ABBOT RD		CITY EAST LANSING	FAX NUMBER (Include Area Code) 517.319.6926
BUILDING OFFICIAL SIGNATURE (Must be an original signature) 			
PROJECT ARCHITECT / ENGINEER (When professional services are required by code or law)			
NAME KEN JONER		MICHIGAN LICENSE NUMBER	FIRM NAME STUDIO INTERLUDE ARCHITECTS
ADDRESS 1114 S. WASHINGTON AVE	CITY LANSING	STATE MI	TELEPHONE NUMBER (Include Area Code) 517.372.8804
APPLICANT (Note: All correspondence will be sent to this address)			
NAME OF APPLICANT/APPLICANT'S REPRESENTATIVE ANDREW K BRANDOFF		COMPANY NAME BRANDOFF INVESTMENT GROUP	SOCIAL SECURITY NUMBER* OR FEIN (REQUIRED) 20-8071625
ADDRESS 3757 KICKADEE DR	CITY EAST LANSING	STATE MI	TELEPHONE NUMBER (Include Area Code) 810.333.0684
I certify the proposed work is authorized by the owner of record. I agree to conform to all applicable laws of the State of Michigan and all information submitted is accurate to the best of my knowledge			FAX NUMBER (Include Area Code) 517.333.6674
APPLICANT SIGNATURE (Must be an original signature) 			DATE 9/4/2008